



# California Regional Water Quality Control Board

## Los Angeles Region



Linda S. Adams  
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

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Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger  
Governor

February 16, 2010

Mr. Robert Brager  
Public Works Director  
City of Malibu  
23815 Stuart Ranch Road  
Malibu, CA 90265

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
CLAIM No. 7005 0390 0000 4138 9755

**REVISED COMPLAINT NO. R4-2008-0041-R FOR ADMINISTRATIVE CIVIL LIABILITY  
FOR THE CITY OF MALIBU, SOLSTICE CANYON CREEK BRIDGE REPLACEMENT  
PROJECT, 26023.5 PACIFIC COAST HIGHWAY, MALIBU, CA.**

Dear Mr. Brager:

Enclosed is Revised Complaint No. R4-2008-0041-R for Administrative Civil Liability in the amount of \$30,015 against the City of Malibu for violation of waste discharge requirements contained in Order No. 2003-0017-DWQ and Water Code section 13376. Also enclosed is a copy of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board) Notice of Public Hearing to Consider Administrative Civil Liability Complaint for this matter.

Unless waived, a hearing before the Regional Board or a Regional Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to California Water Code §§ 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Revised Complaint No. R4-2008-0041-R and return it to the Regional Board by 5:00 pm on March 18, 2010. If we do not receive the waiver and full payment of the mandatory minimum penalty by March 18, 2010, this matter will be heard before the Regional Board or Hearing Panel. An agenda containing the date, time, and location of the hearing will be mailed to you prior to the hearing date.

If you have questions regarding this matter, please contact Mr. Hugh Marley at (213) 620-6375 or Ms. Mercedes Merino at (213) 620-6369.

Sincerely,

Samuel Unger, P.E.  
Assistant Executive Officer

cc: Jeff Ogata, Office of Chief Counsel, State Water Resources Control Board  
Tracy Egoscue, Los Angeles Regional Water Quality Control Board  
Michael Levy, Office of Chief Counsel, State Water Resources Control Board

*California Environmental Protection Agency*



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*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.*

Mr. Robert Brager  
City of Malibu

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February 16, 2010

Bill Orme, State Water Resources Control Board, Division of Water Quality  
Neil Manji, Chief, Fisheries Branch, California Department of Fish and Game  
Kenneth Wong, U.S. Army Corps of Engineers, Regulatory Branch, Los Angeles District  
Jamie Jackson, California Department of Fish and Game, South Coast Region-Region Five  
Tom Ford, Santa Monica Baykeeper  
Mark Gold, Heal the Bay

***California Environmental Protection Agency***



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**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

<b>In the matter of:</b>	)	<b>Complaint No. R4-2008-0041-R</b>
	)	<b>Administrative Civil Liability</b>
<b>City of Malibu's Solstice Creek and Corral Canyon Road Bridge Replacement Project</b>	)	<b>Pursuant to California Water Code §13350(a)(2) and §13385(c)(1)</b>
<b>26023.5 Pacific Coast Highway</b>	)	<b>For Violations of</b>
<b>Malibu, CA</b>	)	<b>Order No. 2003-0017-DWQ and California Water Code §13376</b>

**THE CITY OF MALIBU IS HEREBY GIVEN NOTICE THAT:**

1. The City of Malibu (Permittee) built the Solstice Canyon Creek Bridge Replacement Project (Project), located on Corral Canyon Road at 26023.5 Pacific Coast Highway in Malibu, California. Solstice Canyon Creek flows from north to south under Corral Canyon Road via a box culvert with a reinforced concrete bottom. The Project consisted of removing the existing box culvert under Corral Canyon Road, replacing it with a 28-foot long by 58-foot-wide clear span bridge over Solstice Canyon Creek, and grading about 300 feet of the stream channel. The culvert is located approximately 0.25 miles upstream of the Pacific Ocean.
2. Based on the Regional Water Quality Control Board (Regional Board) staff's inspection of the Permittee's Solstice Creek and Corral Canyon Road Bridge Replacement Project (Site) on January 25, 2008, erosion control and drainage practices employed during the construction activities at the Site were inadequate and resulted in illegal discharges to waters of the State and waters of the United States for which the Regional Board may impose administrative civil liability under section 13350 and 13385 of the California Water Code (CWC).
3. On August 25, 2008, the Regional Board Chief Deputy Executive Officer (Chief Deputy Executive Officer) issued Complaint No. R4-2008-0041 in the amount of \$52,375 for the above-described violations.
4. After further investigation and discussion with the Permittee, the Regional Board Assistant Executive Officer (Assistant Executive Officer) hereby issues Revised Complaint No. R4-2008-0041-R (Revised Complaint) in the amount of \$30,015. This Revised Complaint supersedes Complaint No. R4-2008-0041, which is hereby rescinded.

**BACKGROUND**

5. On June 14, 2005, in response to the Department of Fish and Game (DF&G) 401 Water Quality Certification Application (401 Application) the State Water Resources Control Board issued Order No. 2003-0017-DWQ, pursuant to CWC section 13260, for Conditional Water Quality Certification (401 Water Quality Certification) to DF&G for one hundred and eleven restoration

February 16, 2010

projects funded by DF&G grants, including the Project at Solstice Canyon Creek. The purpose of the restoration projects is to improve watershed conditions for anadromous fish.

6. On September 6, 2006, the Permittee made applications to various local, state and federal agencies to construct the Corral Canyon Road Bridge Project. The Permittee proposed removing the existing box culvert under Corral Canyon Road and replacing it with a 28-foot long by 58-foot-wide clear span bridge over Solstice Creek.
7. On December 14, 2006, DF&G issued Streambed Alteration Agreement Number 1600-2006-0361-R5 to Ms. Shelah Riggs, consultant for the City of Malibu, for the Solstice Creek Project.
8. On May 25, 2007, the United States Army Corps of Engineers determined that the project as described was subject to its jurisdiction under Section 404 of the Clean Water Act due to the temporary impact of approximately 0.14 acres of waters of the United States, including wetlands, as a result of replacing the Corral Canyon Bridge over Solstice Creek in Malibu, California.
9. The City of Malibu received permission from the United States Army Corps of Engineers (Corps) to install a diversion in the channel on May 15, 2007 across the entire width of the channel. The diversion was constructed along the entire 260 foot width of the channel, on both the north side and the south side of the proposed Solstice Canyon Creek Bridge Replacement Project in early Fall 2007. The Permittee pumped the stream around the diversion/construction project and discharged it downstream of the diversion structures. The Solstice Canyon Creek bridge replacement project was completed in the Fall of 2008.
10. The "Other Actions/Best Management Practices" section of DF&G's 401 Application to the State Water Resources Control Board states that project work within the wetted stream "shall be limited to the period between July 1 and November 1, or the first significant fall rainfall." Enclosure 1, the Project Information Fact Sheet, of the State Board's 401 Water Quality Certification stipulates that the identified Best Management Practices must be followed.

#### **FACTUAL ASSERTIONS**

11. On January 25, 2008, after a rain event, Regional Board staff received complaints from the public regarding discharges of soil from spoils piles from the excavation of bridge footers to the creek. Regional Board staff conducted an inspection of the Site on January 25, 2008 and observed spoils piles located on the stream bank and in the creek bed. The rain event had led to erosion and discharge of significant portions of the spoils piles into waters of the State and United States.
12. During the January 25, 2008 inspection, Regional Board staff also noted that there was active erosion along the unprotected stream banks and slopes throughout the Solstice Creek Bridge Replacement Project site (Site).
13. Improper placement of spoils piles and fill material in Solstice Canyon Creek resulted in major discharge of sediment into Solstice Canyon Creek during the January 22, 2008 and January 25, 2008 storm events when the diversion failed.
14. Erosion control and drainage practices employed during the construction activities at this Site proved to be inadequate and resulted in discharges to waters of the State and United States. The Permittee failed to implement the requirements prescribed in their 401 Water Quality Certification.

15. On March 10, 2008, Regional Board staff contacted Mr. Granville Bowman, City of Malibu, to inform the City of the violations. Mr. Bowman stated that the City was aware of the spoils piles being stock piled in the creek and that some of the material had washed downstream.
16. On March 11, 2008, Mr. Richard Calvin, City of Malibu, contacted Regional Board staff to inform the Regional Board that the spoils piles had been removed from the creek.
17. The creation of conditions of pollution or nuisance in any waterbody and its subsequent discharge in violation of waste discharge requirements are violations of CWC sections 13350, 13376 and 13385. The discharges were not solely a result of natural phenomena of an exceptional, inevitable, and irresistible character and could have been prevented or avoided by the exercise of due care or foresight (i.e. compliance with stated Best Management Practices).

#### **SOURCES OF INFORMATION**

18. The facts set forth above were obtained from the following sources:
  - a. Regional Board staff inspection on January 25, 2008.
  - b. Regional Board staff inspection report and photographs taken January 25, 2008.
  - c. Regional Board staff inspection on March 6, 2008 and photographs taken that day.
  - d. Regional Board Record of Communication dated March 10, 2008.
  - e. Regional Board Record of Communication dated March 11, 2008.
  - f. Regional Board staff inspection on March 21, 2008.

#### **COUNT I**

19. The Regional Board realleges paragraphs 1 through 18.

#### **IMPACTS TO THE WATERS OF THE STATE**

20. As set forth in the factual assertions above, the Permittee and/or its contractors, agents, and employees improperly placed spoils piles and fill material in Solstice Canyon Creek, a water of the State, which resulted in major discharge of sediments into Solstice Canyon Creek during the January 22, 2008 and January 25, 2008 storm events.
21. The placement of the spoil piles and fill material in Solstice Canyon Creek was the first discharge to waters of the State because even when a stream is temporarily diverted, the streambed, itself, has not moved. The vegetation and soil structure of the streambed remain despite the diversion. The second discharge occurred when the storm event further discharged the sediments into Solstice Canyon Creek.
22. Further, erosion control and drainage practices employed by the Permittee's contractors during the construction activities at this Site were inadequate and resulted in discharges to Solstice Canyon Creek, a water of the State, and impacted water quality and beneficial uses.
23. The Permittee violated Order No. 2003-0017-DWQ and the 401 Water Quality Certification because the Permittee worked outside the mandated timeframe of July 1 to November 1 as established in Section 11 of the DF&G 401 Application and Certification. Therefore the Permittee did not use best management practices to avoid degrading the water quality.

### CONCLUSION

24. Based on the Regional Board staff inspection of the Permittee's Solstice Creek and Corral Canyon Road Bridge Replacement Project (Site) on January 25, 2008, erosion control and drainage practices employed during the construction activities at this Site were inadequate and the construction itself took place outside the timeframe established in the 401 Application and Certification. The improper activities stated above all led to illegal discharges to the waters of the State for 45 days from January 25, 2008 to March 10, 2008, for which the Regional Board may impose administrative civil liability under section 13350 of the CWC.
25. The unauthorized placement of waste (the spoils piles) by the Permittee's contractor in the streambed where it was washed away during a rain event constituted a discharge to waters of the State. These discharges are in violation of water quality objectives established in the *Water Quality Control Plan for the Los Angeles Region* and applicable State and Federal Water Quality Standards. The Permittee's activities adversely impacted Solstice Creek.

### POTENTIAL CIVIL LIABILITY

26. Section 13350(a)(2) of the CWC states that "(a) Any person who... (2) in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state... shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e)."
27. Pursuant to CWC section 13350(e), civil liability may be administratively imposed by a Regional Board in accordance with CWC section 13323 et seq. in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs or ten dollars (\$10) for each gallon of waste discharged, but not both.

The maximum civil liability authorized by the CWC for violation of the requirements contained in Order No. 2003-0017-DWQ, for Count 1, is:

#### **COUNT I MAXIMUM PENALTY**

Penalty Category	Calculation	Total
<i>Failure to comply with Order No. 2003-0017-DWQ</i>	CWC section 13350(a)(2): 45 days x \$5,000/day	\$225,000
<b>MAXIMUM ACL</b>		<b>\$225,000</b>

### COUNT II

28. The Regional Board realleges paragraphs 1 through 18 and asserts the following as an alternative to Count 1.

### **IMPACT TO THE WATERS OF THE UNITED STATES**

29. As set forth in the factual assertions above, the Permittee's contractors improperly placed spoils piles and fill material in Solstice Canyon Creek, which resulted in major discharges of sediment into Solstice Canyon Creek during the January 22, 2008 and January 25, 2008 storm events. Even when a stream is temporarily diverted, the streambed itself has not moved, therefore, this placement of spoils piles and fill material into the streambed constitutes a discharge.
30. Further, erosion control and drainage practices employed by the Permittee's contractors during the construction activities at this Site proved to be inadequate and resulted in discharges to Solstice Canyon Creek, a water of the United States, and impacted water quality and beneficial uses.
31. The Permittee violated Order No. 2003-0017-DWQ and the 401 Water Quality Certification because the Permittee worked outside the mandated timeframe of July 1 to November 1 as established in Section 11 of the DF&G 401 Application and Certification. Therefore the Permittee did not use best management practices to avoid degrading the water quality.

### **CONCLUSION**

32. The Permittee illegally discharged into waters of the United States when they placed spoils piles and fill material in Solstice Canyon Creek. The placement of the spoils piles in the creek violated best management practices as required by 401 Water Quality Certification and Order No. 2003-0017-DWQ.
33. The inadequate erosion control and drainage practices and the construction outside the mandated timeframe of July 1 to November 1 at the Site were in violation of the 401 Water Quality Certification and Order No. 2003-0017-DWQ, both issued by the State Water Resources Control Board. The State Water Resources Control Board issued this certification pursuant to CWC Section 13160 because, when issuing the certification and Order No. 2003-0017-DWQ, the State Board exercised powers delegated to the state by the Federal Water Pollution Control Act.

### **POTENTIAL CIVIL LIABILITY**

34. Section 13376 of the CWC states that "The discharge of pollutants or dredged or fill material... by any person except as authorized by waste discharge requirements or dredged or fill material permits is prohibited..."
35. Section 13160 of the CWC states that "The state board is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act and any other federal act, heretofore or hereafter enacted, and is (a) authorized to give any certificate or statement required by any federal agency pursuant to any such federal act that there is reasonable assurance that an activity of any person subject to the jurisdiction of the state board will not reduce water quality below applicable standards, and (b) authorized to exercise any powers delegated to the state by the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.) and acts amendatory thereto."

36. Section 13385 of the CWC states “(a) Any person who violates any of the following shall be liable civilly in accordance with this section: (1) Section 13375 or 13376... (2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.”
37. Pursuant to CWC section 13385(c)(1), civil liability may be administratively imposed by a Regional Board in accordance with CWC section 13323 et seq. in an amount which shall not exceed ten thousand dollars (\$10,000) for each day in which the violation occurs.

**COUNT II  
MAXIMUM PENALTY**

Penalty Category	Calculation	Total
<i>Failure to comply with 401 Water Quality Certification and Order No. 2003-0017-DWQ</i>	CWC section 13385(c)(1): 45 days x \$10,000/day	\$450,000
<i>Failure to comply with CWC section 13376</i>	CWC section 13385(c)(1): 45 days x \$10,000/day	\$450,000
<b>MAXIMUM ACL</b>		<b>\$900,000</b>

**RECOMMENDED CIVIL LIABILITY**

38. Pursuant to sections 13327 and 13385(e) of the CWC, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violation(s); susceptibility of the cleanup or abatement of the discharge; the degree of toxicity of the discharge; with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability and economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.

a. Nature, circumstances, extent, and gravity of the violations:

The Permittee's improper management practices during the Solstice Canyon Creek Bridge construction project lead to the pollution and degradation of water quality in Solstice Canyon Creek and consequently the Pacific Ocean. The discharges were not solely a result of natural phenomenon of an exceptional, inevitable, and irresistible character and could have been prevented or avoided by the exercise of due care or foresight by not putting the spoils piles into the creek bed, or by not constructing during the period of July 1 through November 1, as mandated by the 401 Certification. However, while the improper placement of the spoils piles and fill material was the cause of the discharge, the considerable storm made the discharge worse and more difficult to prevent. Therefore, a reduction from the maximum civil liability is warranted.

b. Susceptibility of the cleanup or abatement of the discharge:

On March 11, 2008, Regional Board staff contacted the Permittee's representatives and requested the removal of the spoils piles. In compliance with the request, the spoils piles



were removed. Following the removal of the spoils piles, the Permittee implemented the required BMPs at the site until the end of the project. Therefore, a reduction from the maximum civil liability is warranted.

c. Degree of toxicity of the discharge:

The discharge of material from the spoils piles resulted in a negative impact on water quality downstream by increasing turbidity and total suspended solids in waters of the State. However, because of the rain event, the discharge was part of a larger natural run-off of debris from an earlier fire event. Therefore, a reduction from the maximum civil liability is warranted.

d. The ability of the Permittee to pay:

The Permittee has not submitted sufficient information for the Regional Board to determine the Permittee's ability to pay the maximum civil liability. It is possible; however, that the maximum liability of \$1,125,000 is in excess of the financial resources available to the Permittee because the Permittee is undertaking other water quality improvement projects. Therefore, a reduction from the maximum civil liability is warranted.

e. The effect on the Permittee's ability to continue its business:

The Permittee has not submitted sufficient information for the Regional Board to determine the Permittee's ability to continue its business. It is possible; however, that the maximum liability of \$1,125,000 will have an effect on the Permittee's ability to continue its business because the Permittee is undertaking other water quality improvement projects. Therefore, a reduction from the maximum civil liability is warranted.

f. Any voluntary cleanup efforts undertaken:

In addition to the Permittee's full compliance with the Regional Board request, the Permittee implemented remediation and mitigation measures to rectify the effects the Project had on the stream channel. Therefore, a reduction from the maximum civil liability is warranted.

g. Prior history of violations:

The Permittee does not have a history of prior violations of this nature; therefore, a reduction of the maximum civil liability is warranted.

h. Degree of culpability:

The discharge alleged in this Complaint was avoidable and the Permittee failed to implement the requirements prescribed in its 401 Water Quality Certification. However, it is clear the Permittee made efforts to have its contractor implement best management practices and to oversee the contractor prior to the rain events. Therefore, a reduction from the maximum civil liability is warranted.

i. Economic benefit or savings:

Economic benefit or savings as a result of the illegal discharge is unknown.

j. Other matters as justice may require:

An additional matter to consider includes time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this complaint and related documents. The Regional Board charges at a rate of \$125 per hour for staff cost recovery. With total staff time at approximately 60 hours, staff costs incurred by the Regional Board are estimated at \$7,500.

- a. After consideration of the factors in sections 13327 and 13385(e) of the CWC, the Chief Deputy Executive Officer recommends that administrative civil liability be imposed on the Permittee by the Regional Board in the amount of \$30,000.

**RECOMMENDED CIVIL LIABILITY**

Penalty Category	Calculation	Total
<i>For failing to comply with Order No. 2003-0017-DWQ</i>	CWC section 13350(a)(2): 45 days x \$667/day	\$30,015
<b>TOTAL RECOMMENDED PENALTY</b>		<b>\$30,015</b>

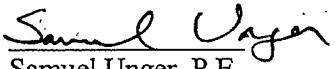
39. If the Permittee elects to pay the recommended civil liability, the administrative civil liability is due and payable and must be received by the Regional Board by the close of business on **March 18, 2010**.
40. The Permittee may waive the right to a hearing. Should the Permittee choose to waive the right to a hearing, an authorized agent must sign the waiver form attached to this complaint and return the executed waiver form to the Regional Board at 320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013 to be received by the Regional Board by the close of business on **March 18, 2010**. If the hearing is waived, the following options are available to satisfy the civil liability:
- a. A check in the amount of **\$30,015** (payable to the State Water Resources Control Board Waste Discharge Permit Fund) shall accompany the signed waiver.
41. Unless waived, a hearing before the Regional Board or Regional Board Hearing Panel (Hearing Panel) will be held within 90 days after service of this Complaint pursuant to CWC sections 13228.14 and 13323. Should the Permittee choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to Complaint No. R4-2008-0041-R and return it to the Regional Board by **March 18, 2010**. If we do not receive the waiver and payment of the penalty by October 1, 2009, the matter will be heard before the Regional Board or Hearing Panel.
42. The Permittee and/or the Permittee's representative(s) will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. A notice containing the date, time, and location of the hearing will be mailed to the Permittee not less than ten (10) days prior to the hearing date. The Regional Board or a Regional Board Hearing Panel may assess a penalty higher than the recommended civil liability in this Revised Complaint.
43. The Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial liability in a greater amount.
44. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations contained in the California Code of Civil Procedure that refers to "actions" and

City of Malibu

Administrative Civil Liability Complaint No. R4-2008-0041-R

"special proceedings" apply to judicial proceedings, not administrative proceedings. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

45. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.

  
Samuel Unger, P.E.  
Assistant Executive Officer

February 16, 2010

**WAIVER FORM**

**FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R4-2008-0041-R**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent The City of Malibu (Permittee) in connection with Administrative Civil Liability Complaint No. R4-2008-0041-R (Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

- ☐ **(OPTION 1: Check here if the Permittee waives the hearing requirement and will pay the recommended liability.)**
- a. I hereby waive any right the Permittee may have to a hearing before the Regional Water Board.
  - b. I certify that the Permittee will remit payment for the civil liability imposed in the amount of **\$30,015** by check that references "ACL Complaint No. R4-2008-0041-R" made payable to the "*Waste Discharge Permit Fund*". Payment must be received by the Regional Water Board by **March 18, 2010** or this matter will be placed on the Regional Water Board's agenda for a hearing as initially proposed in the Complaint.
  - c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Permittee having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
  - d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Permittee to further enforcement, including additional civil liability.
- ☐ **(OPTION 2: Check here if the Permittee waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Permittee may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Permittee will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Permittee requests that the Regional Water Board delay the hearing so that the Permittee and the Prosecution Team can discuss settlement. It remains within the

City of Malibu

Administrative Civil Liability Complaint No. R4-2008-0041-R

discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

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(Print Name and Title)

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(Signature)

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(Date)

**HEARING PANEL OF THE  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, California 90013  
(213) 576-6600

ACLC No. R4-2008-0041-R

**NOTICE OF PUBLIC HEARING**

**TO CONSIDER AN ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND  
PROPOSE RECOMMENDATIONS**

**DISCHARGER**

City of Malibu  
Solstice Canyon Creek Project

**DISCHARGE LOCATION**

26023 Pacific Coast Highway  
Malibu, California

**RECEIVING WATERS**

Solstice Canyon Creek

Revised Administrative Civil Liability Complaint ("ACLC") No. R4-2008-0041-R alleges that the City of Malibu (Permittee) has violated waste discharge requirements contained in State Water Board Order No. 2003-0017-DWQ and the Federal Clean Water Act Section 401 by failing to implement all terms and conditions prescribed in its Clean Water Act section 401 Certification during the period January 25, 2008 through March 10, 2008. As stated in the ACLC, Regional Board staff, represented by the Regional Board Staff Prosecution Team (Prosecution Team), recommends that a penalty of \$30,000 be assessed against the City of Malibu for these violations.

Pursuant to Water Code section 13228.14, a Hearing Panel consisting of three members of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Board") will convene a hearing to hear evidence, determine facts, and to propose a recommendation to the Regional Board about resolution of the ACLC.

This notice sets forth procedures to be used by hearing panels of the Regional Board and outlines the process to be used at this hearing.

**I. HEARING DATE AND LOCATION**

Date: May 17, 2010

Time: 10:00 A.M.

Place: 320 W. 4<sup>th</sup> Street

Los Angeles, CA 90013

- Room location TBD

## **II. AVAILABILITY OF DOCUMENTS**

The ACLC, related documents, proposed order, comments received, and other information about the subject of the ACLC are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. at the following address:

California Regional Water Quality Control Board  
Los Angeles Region  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Arrangements for file review and/or copies of the documents may be made by calling the Los Angeles Regional Board at (213) 576-6600.

The entire file will become a part of the administrative record of this proceeding, irrespective of whether individual documents are specifically referenced during the hearing. However, the entire file might not be available at the hearing. Should any parties or interested persons desire that the Prosecution Team bring to the hearing any particular documents that are not included in the Hearing Panel binder, they must submit a written or electronic request to the Prosecution Team during business hours, not later than **April 27, 2010**. The request must identify the documents with enough specificity for the Prosecution Team to locate them. (Documents in the Hearing Panel binder will be present at the hearing.)

## **III. NATURE OF HEARING**

This will be a formal adjudicative hearing pursuant to part 648 et seq. of title 23 of the California Code of Regulations. Chapter 5 of the California Administrative Procedure Act (commencing with section 11500 of the Government Code) relating to formal adjudicative hearings does not apply to adjudicative hearings before the Regional Board, except as otherwise specified in the above-referenced regulations.

## **IV. PARTIES TO THE HEARING**

The following are the parties to this proceeding:

1. The City of Malibu
2. Regional Board Staff Prosecution Team

All other persons who wish to participate in the hearing as a designated party shall request party status by submitting a written or electronic request to the Legal Advisor to the Hearing Panel identified in section VIII below no later than **April 5, 2010**. The request shall include a statement explaining the reasons for their request (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person), and a statement explaining why the party or parties designated above do not adequately represent the person's interest. The requesting party

will be notified before the hearing whether the request is granted. All parties will be notified if other persons are so designated.

## **V. COMMUNICATIONS WITH THE PROSECUTION TEAM**

The California Administrative Procedure Act requires the Regional Board to separate prosecutorial and adjudicative functions in matters that are prosecutorial in nature. A Prosecution Team, comprised of the Regional Board enforcement and other staff, will serve as the complainant in the proceedings and is a designated party. The Case Manager over this matter, who will coordinate the efforts of the Prosecution Team, is Mercedes Merino. Jeffery Ogata, Senior Staff Counsel for the Regional Board, will advise the Prosecution Team prior to and at the panel hearing. Mr. Ogata is currently advising the Regional Board in other unrelated matters, but neither Mr. Ogata nor the members of the Prosecution Team will be advising the Regional Board in this matter or have engaged in any substantive conversations regarding the issues involved in this proceeding with any of the Board Members or the advisors to the hearing panel (identified below).

Any communication with the Prosecution Team prior to the hearing should be directed to the Case Manager:

Mercedes Merino  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013  
(213) 620-6369  
[mmerino@waterboards.ca.gov](mailto:mmerino@waterboards.ca.gov)

## **VI. PUBLIC COMMENTS AND SUBMITTAL OF EVIDENCE**

### **A. Submittals By Parties.**

Not later than **March 26, 2010**, the prosecution Team will send the parties a preliminary Hearing Panel binder containing the most pertinent documents related to this proceeding and a PowerPoint presentation, which summarizes the evidence and testimony that the Prosecution Team will present and rely upon at the hearing.

The City of Malibu and other designated parties are required to submit:

- 1) Any additional documents or evidence the Party/ies want(s) the Hearing Panel to consider,
- 2) A summary of any testimony the Party/ies intend(s) to present, and
- 3) A statement regarding how much time the Party/ies need(s) to present the case to the attention of the Case Manager of the Prosecution Team (as identified above) and other designated parties no later than close of business on **April 19, 2010**. The Prosecution Team shall have the right to present additional evidence in rebuttal of matters submitted by any other party.



The Prosecution Team will send to the Hearing Panel and the parties a final Hearing Panel binder no later than **May 6, 2010**.

**B. Submittals By Interested Persons.**

Persons who are not designated as parties, above, that wish to comment upon or object to the proposed ACLC, or submit evidence for the Hearing Panel to consider, are invited to submit them in writing to the Prosecution Team (as identified above). To be evaluated and responded to by Prosecution Team, included in the final Hearing Panel binder, and fully considered by the Hearing Panel in advance of the hearing, any such written materials must be received no later **March 18, 2010**. If possible, please submit written comments in Word format electronically to [mmerino@waterboards.ca.gov](mailto:mmerino@waterboards.ca.gov). Interested persons should be aware the Regional Board is entitled to settle this matter without further notice, and therefore a timely submittal by this date may be the only opportunity to comment upon the subject of this ACLC. If the hearing proceeds as scheduled, the Hearing Panel will also receive oral comments from any person during the hearing (see below).

**VII. HEARING PROCEDURES**

Adjudicative proceedings before the Hearing Panel generally will be conducted in the following order:

- Opening statement by Hearing Panel Chair
- Administration of oath to persons who intend to testify
- Prosecution Team presentation
- Discharger presentation
- Designated parties' presentation (if applicable)
- Interested persons' comments
- Prosecution Team rebuttal
- Questions from Hearing Panel
- Deliberations (in open or closed session)
- Announcement of recommendation to the Regional Board

While this is a formal administrative proceeding, the Hearing Panel does not generally require the cross examination of witness, or other procedures not specified in this notice, that might typically be expected of parties in a courtroom.

Parties will be advised by the Hearing Panel after the receipt of public comments, but prior to the date of the hearing, of the amount of time each party will be allocated for presentations. That decision will be based upon the complexity and the number of issues under consideration, the extent to which the parties have coordinated, the number of parties and interested persons anticipated, and the time available for the hearing. The parties should contact the Case Manager not later than **April 19, 2010** to state how much time they believe is necessary for their presentations (see Section VI. A above). It is the Regional Board's intent that reasonable requests be accommodated.

Interested persons are invited to attend the hearing and present oral comments. Interested persons may be limited to approximately five (5) minutes each, for their presentations, in the discretion of the Chair, depending on the number of persons wishing to be heard. Persons with similar concerns or opinions are encouraged to choose one representative to speak.

For accuracy of the record, all important testimony should be in writing, and delivered as set forth above. The Hearing Panel will include in the administrative record written transcriptions of oral testimony or comments made at the hearing.

## **VIII. COMMUNICATIONS WITH THE HEARING PANEL**

### **A. Ex Parte Communications Prohibited.**

As an adjudicative proceeding, Regional Board members and their advisors may not discuss the subject of this hearing with any person, except during the public hearing itself, except in the limited circumstances and manner described in this notice. **Any communications to the Regional Board, Hearing Panel, or Hearing Panel Advisors before the hearing must also be copied to the Prosecution Team and other Party(ies), as identified above.**

### **B. Hearing Panel Advisors.**

The Hearing Panel will be advised before and during the hearing by Executive Officer Tracy Egoscue, and a Legal Advisor, Michael Levy, Senior Staff Counsel for the Regional Board. While Ms. Egoscue exercises general oversight over the staff's enforcement activities, neither she nor Mr. Levy have exercised any authority or discretion over the Prosecution Team, or advised them with respect to this matter.

### **C. Objections to manner of hearing and resolution of any other issues.**

1. Parties or interested persons with procedural requests different from or outside of the scope of this notice should contact the Case Manager at any time, who will try to accommodate the requests. Agreements between a party and the Prosecution Team will generally be accepted by the Hearing Panel as stipulations.
2. Objections to (a) any procedure to be used during this hearing, (b) any documents or other evidence submitted by the Prosecution Team, or (c) any other matter set forth in this notice, must be submitted in writing no later than **April 19, 2010** to the Legal Advisor to the Hearing Panel:

Michael Levy  
State Water Resources Control Board  
1001 I Street, 22<sup>nd</sup> Floor  
Sacramento, CA 95814  
(916) 341-5193  
[mlevy@waterboards.ca.gov](mailto:mlevy@waterboards.ca.gov)

Untimely objections will be deemed waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

3. Any issues outside the scope of those described in section C.2, above, that cannot be resolved by stipulation shall be brought to the attention of the Legal Advisor to the Hearing Panel, as set forth in section C.2, by **April 19, 2010** if possible, and if not possible, then at the earliest possible time with an explanation about why the issue could not have been raised sooner.

#### **IX. APPLICABILITY OF NOTICE**

The Executive Officer has directed the use of this standard notice in an order dated March 5, 2008. If you have any questions about this Notice of Public Hearing, please contact as appropriate, the Case Manager of the Prosecution Team, or the Legal Advisor to the Hearing Panel as described above.

Date: **February 17, 2010**